

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement For Professional Services (this “Agreement”) is entered into on February 8, 2018 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), and Opticos Design, Inc., a California corporation with its registered office address at 2100 Milvia St., Suite 125, Berkeley, California 94704 (the “Provider”) (each a “Party” and collectively the “Parties”).

For and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Services. The Provider will provide to the Commission the professional services (the “Services”) set forth in the Provider’s proposal attached hereto as Exhibit A (the “Scope of Work”). In the event of any conflict between the terms of this Agreement and the terms of the Scope of Work, the terms of this Agreement will prevail. The Provider will execute its obligations under this Agreement in accordance with the prevailing professional standard of care for projects of similar design and complexity.

2. Compensation. In exchange for the Provider’s performance of the Services, and subject to the terms and conditions of this Agreement, the Commission will pay the Provider a total sum not to exceed Sixty Thousand Dollars (\$60,000.00) (the “Contract Amount”). The Commission will pay the Contract Amount in installments upon regular invoicing by the Provider (each a “Contract Installment”). The Commission will not be required to pay any Contract Installment if the Commission is not reasonably satisfied with the Provider’s performance under this Agreement or any default or breach of this Agreement by the Provider exists, as the Commission may determine in its sole discretion. The sum of all Contract Installments will not exceed the Contract Amount, and the Provider will not incur or seek reimbursement for any expenses in excess of the Contract Amount.

3. Term; Termination. Unless earlier terminated in accordance with its terms, this Agreement will commence on the Effective Date and end upon the Provider’s completion of all its obligations hereunder and the Commission’s final payment therefor. Notwithstanding the foregoing, effective immediately upon delivery of a written termination notice to the Provider, the Commission may terminate this Agreement, in whole or in part, for any reason, if the Commission determines that such termination is in the best interest of the Commission or the City of South Bend (the “City”). In addition, in accordance with applicable laws, payments are subject to annual appropriation. If the City Controller, serving in her capacity as the Commission’s treasurer, makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by the City Controller that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The Commission will not be required to pay any Contract Installment or be otherwise liable for any cost associated with the Provider’s performance of any Services after the effective date of termination.

4. Remedies for Breach of Contract. The Provider’s failure to complete the Services

in accordance with this Agreement will be considered a material breach. In the event of any breach of this Agreement by the Provider, the Commission may suspend all payments to the Provider and may pursue any and all remedies available at law or in equity.

5. Point of Contact. The City employee identified in Section 10 below will serve as the Commission's principal point of contact for purposes of this Agreement.

6. Relationship. The Provider shall at all times be an independent contractor for the performance of the Services rather than an employee of the City or the Commission, and no act or omission to act by the Provider shall in any way bind or obligate the City or the Commission. No employee of the Provider will be considered or deemed to be an employee of the City or the Commission. This Agreement is strictly for the benefit of the Parties and not for any third party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The Commission and the Provider hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Provider and the Commission and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission and the Provider.

7. Indemnification of Commission. The Provider hereby agrees to indemnify and hold harmless the City and the Commission, and their respective officials, employees, and agents, from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, except for claims arising out of the negligence of the City, the Commission, or their respective officials, directors, employees, or agents. The obligations of the Provider under this section shall survive the termination of this Agreement.

8. Work Product; Ownership. The Provider will submit its work product to the Commission in accordance with the terms of the Scope of Work. Any and all work product submitted by the Provider to the Commission as part of the Provider's performance of the Services will become the exclusive property of the Commission, and the Commission will have the right to use and reproduce copies of the Provider's work product as the Commission determines in its sole discretion without compensation to the Provider except the compensation expressly provided for in this Agreement. The Commission agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants against any damages, liabilities or costs, including reasonable attorneys' fees, arising from or allegedly arising from or in any way related to or connected with the reuse or modification of the deliverables by the Commission. The Commission will credit the Provider each time the deliverables are used.

9. Assignment. The Provider shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the Commission, except for the Provider's subcontracting, at the Provider's sole cost, of the work required under the Scope of Work to be completed by an economist.

10. Notices. Any notice required or permitted to be delivered hereunder shall be

deemed to be delivered when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the Commission or the Provider, as the case may be, at the address set forth below.

Provider:
Opticos Design, Inc.
2100 Milvia St., Suite 125
Berkeley, CA 94704
Attn: Megan Reineccius

Commission:
City of South Bend
227 W. Jefferson Boulevard, Suite 1400 S.
South Bend, IN 46601
Attn: Elizabeth Maradik

11. Equal Opportunity; Non-Discrimination; Compliance. The Provider shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Provider shall comply with all federal, state, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Provider certifies that it is in compliance with each such provision and shall remain in compliance through the term of this Agreement.

12. Contractor's Affidavit. The Provider agrees, as a condition precedent to the effectiveness of this Agreement, that its authorized representative will execute and submit to the Commission and any other appropriate bodies an affidavit in the form attached hereto as Exhibit B.

13. Drug-Free Workplace. The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the Commission within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

14. Entire Agreement; Amendment; Applicable Law. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Provider and the Commission. This Agreement will be construed and interpreted according to the laws of the State of Indiana.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement For Professional Services to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

OPTICOS DESIGN, INC.,
a California corporation

By: _____
Printed: _____
Its: _____
Date: _____

4000.0000001 41104737.003

EXHIBIT A

Scope of Work

[See attached.]

EXHIBIT B

Contractor's Affidavit

[See attached.]